

1 Matthew B. Lowy  
2 Kathleen Molsberry  
3 Kai Puhrmann  
4 Lowy Law, P.L.L.C.  
5 103 S. 5th Street E  
6 Missoula, Montana 59801  
7 (406) 926-6500  
8 documents@LowyLawFirm.com

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*Attorneys for Plaintiff Savanna Everett*

SAVANNA EVERETT,  
Plaintiff,  
  
v.  
HOLIDAY STATIONSTORES,  
Defendant.

Cause No.  
Department No.  
Judge

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

COMES NOW Plaintiff Savanna Everett, by and through her counsel of record, Lowy Law, PLLC, for her claims for relief against the above-named defendant and alleges upon information and belief as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is Savanna Everett, an individual. For all times relevant to the present lawsuit, Ms. Everett was a resident of Missoula County.
2. Defendant Holiday Stationstores is registered for-profit corporation with the Montana Secretary of State. Defendant Holiday Stationstores was at all times relevant hereto, registered in Montana.

3. The events that form the basis of this complaint occurred in Missoula, Missoula County, Montana.
  4. This Court has jurisdiction over the parties, and the matters alleged herein, and the Fourth Judicial District Court in Missoula County is the proper place of venue for this case to proceed.

## **GENERAL ALLEGATIONS**

5. From January 2020 until August 2020, Ms. Savanna Everett worked for Holiday Station Stores (hereinafter “Defendant Holiday”) at the 605 S. Higgins Avenue location in Missoula, Montana. She had been previously employed by Defendant Holiday at this same location from December 2015 to July 6, 2017.
  6. On June 14, 2020 at approximately 2:30am, Ms. Everett was assaulted by customer T.T. while working an 11pm to 3am graveyard shift. Ms. Everett was the sole employee working on the premises at the time.
  7. Ms. Everett was wearing a panic button at the time of the assault. The panic button had not been in working condition for a significant amount of time. Defendant Holiday had very recently repaired the panic button, but had not informed Ms. Everett the panic button was repaired.
  8. At the time of the incident, T.T. began speaking with Ms. Everett. Ms. Everett needed to conduct work in the back of the store. She tried to get the customer to finish her conversation with her and leave. The customer became agitated and Ms. Everett pointed to the door and told her to leave the store.
  9. The customer threatened Ms. Everett. Before Ms. Everett could reach for an alarm or call 911, the customer hit and punched her in the head, slammed her head on the counter, bit her finger, struck her repeatedly with

1 a metal stool multiple, and stabbed Ms. Everett in the head and face  
2 multiple times with the jagged end of a broken broom handle.

- 3 10. Ms. Everett initially attempted to defend herself, but failed and curled up on  
4 the floor in a fetal position to try and protect herself from the vicious  
5 onslaught. When the police arrived, she was covered in her own blood.  
6 11. Another customer who subsequently entered the store attempted to help  
7 stop the bleeding from Ms. Everett's head. Ms. Everett was taken to St.  
8 Patrick's Hospital emergency room by ambulance. She was treated at the  
9 hospital for several lacerations, contusions, and bleeding to her head, and  
10 given amoxicillin for the puncture wounds on her finger.  
11 12. Ms. Everett was diagnosed with a concussion and multiple lacerations and  
12 deep bruises on her legs, hips, and face.  
13 13. June 24, 2020, 10-days after the attack, Ms. Everett returned to work. She  
14 was placed back on the same 11am to 3am graveyard shift. Defendant  
15 Holiday failed to assign a second employee was to work with her.  
16 14. Ms. Everett reported to Defendant Holiday store manager E.C. that she  
17 was too afraid to continue working the graveyard shift alone, so Defendant  
18 Holiday added a second employee from 12am to 2am on Fridays and  
19 Saturdays only.  
20 15. This second employee did not provide support to Ms. Everett. He refused  
21 to assist Ms. Everett in dealing with agitated or hostile customers or to  
22 assist her in enforcing bans on individuals who were not allowed on the  
23 premises. Defendant Holiday declined to provide Ms. Everett with any  
24 further support during the graveyard shift.  
25 16. In August 2020, Ms. Everett resigned her position with Defendant Holiday  
26 because she was too afraid to continue working during graveyard shifts  
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1 without assistance from a second employee for the entire duration of her  
2 shifts.

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4 **Prior Incidents**

- 5 17. Prior to Ms. Everett's assault, Defendant Holiday received numerous  
6 complaints from employees at the Higgins location of safety threats.
- 7 18. 2018, Holiday Manager A.N. got into a fight with an employee and punched  
8 the employee in the face. A.N. was not terminated for this incident; the  
9 employee she punched was terminated.
- 10 19. Approximately March 2018, Assistant Manager S.C. was regularly  
11 harassed by a transient customer. Assistant Manager S.C. reported these  
12 incidents and no action was taken by management. The transient  
13 customer continued to be allowed in the store. Several other employees  
14 told this customer to leave the property due to inappropriate behavior. One  
15 incident with this customer prompted a Holiday employee to call the police.  
16 However, Holiday management did not enforce a ban on the transient  
17 customer.
- 18 20. During 2020, Ms. Everett reported incidents of sexual harassment from  
19 customers to her supervisors from Defendant Holiday. Defendant Holiday  
20 did not provide Ms. Everett with any training on how to report these  
21 incidents or how to deal with them.
- 22 21. During 2020, Defendant Holiday Assistant Manager M.M. reported to  
23 Defendant Holiday Store Manager E.C. her suspicion Defendant Holiday  
24 employee E.P. was using methamphetamine at the Higgins Avenue Holiday  
25 store front. Defendant Holiday did not take any action regarding this report.
- 26 22. Ms. Everett also reported to Defendant Holiday Store Manager E.C. that  
27 Holiday employee E.P. made her uncomfortable and that he had yelled at  
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her in the store. Defendant Holiday took no action regarding E.P. It was discovered later that E.P. was involved in a plot to rob the store.

23. During 2020, an Assistant Manager reported to Defendant Holiday Store Manager E.C. that another employee was selling methamphetamine at the Higgins Avenue Holiday store. Defendant Holiday did not take any action regarding this report.
  24. May or June 2020, approximately a week prior to Ms. Everett's assault, an assistant manager was physically beaten by another Holiday employee. At the time this employee was hired, Defendant Holiday knew this employee had a restraining order restricting him from another person.
  25. After the incident, the employee was terminated from employment with Defendant Holiday and banned from the premises, but he was then hired at a restaurant across the street, Ciao Mambo. The ex-employee continued to come to the storefront. Defendant Holiday offered no training or instructions for the other Holiday employees on how to deal with the ex-employee or enforce the ban against him.
  26. After the assault, Defendant Holiday Store Manager E.C. informed employees they were not talk about the assault. The Assistant Manager who had been assaulted expressed he felt unsafe coming to work.

## Lack of Safety Training

27. Despite employee safety at the Higgins Avenues Holiday store being a reoccurring problem, Defendant Holiday employees were not sufficiently instructed or trained by Defendant Holiday on how to deal with threatening or hostile visitors to the store.
  28. Upon hiring by Defendant Holiday, the totality of the training employees received was a safety video to watch demonstrating how to de-escalate a

1 situation with hostile customers. Defendant Holiday provided no training on  
2 how report hazardous incidents or what to do in the event of a physical  
3 attack.

- 4 29. Defendant Holiday employees and assistant managers were never shown  
5 an employee handbook.
- 6 30. Defendant Holiday employees and assistant managers were not trained  
7 how to fill out an incident report if an employee was injured. Defendant  
8 Holiday did not keep records of employees injured while on shift or respond  
9 to safety concerns.
- 10 31. After Ms. Everett's attack, Defendant Holiday management did not discuss  
11 the attack with the employees, how to prevent anything similar happening  
12 in the future, or provide any additional safety training.
- 13 32. Defendant Holiday failed to maintain portable alarm buttons in working  
14 condition or to inform employees whether the alarm buttons were in  
15 working condition or not.
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17 **APPLICABLE LAW TO ALL COUNTS**

- 18 33. According to the Montana Supreme Court, the doctrine of *respondeat  
superior* is when “the consequences of one person's actions may be  
attributed to another person.” Denke v. Shoemaker, 2008 MT 418, ¶ 73,  
21 347 Mont. 322, 198 P.3d 284. This doctrine will be imposed upon an  
22 employer when an employee is acting “within the scope of his or her duties  
23 to the employer,” which is usually a question of fact, but becomes a  
24 question of law for the court when “only one legal inference may  
25 reasonably be drawn from the facts.” Denke at ¶ 74.
- 26 34. A condition that arises from mental or emotional distress is excluded from  
27 the definition of injury set forth in Mont. Code Ann. § 39-71-119, and thus

1 cannot be covered by Worker's Compensation. Onstead v. Payless, 2000  
2 MT 230, ¶ 30, 301 Mont. 259, 9 P.3d 38.

- 3 35. Worker's compensation only covers physical injuries. Emotional and/or  
4 mental trauma that is not the result of physical injury will not be paid by  
5 worker's compensation. Id.  
6 36. Worker's compensation benefits do not cover Ms. Everett's psychological  
7 damages and it does not bar her claims against Defendant Holiday.

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9 **COUNT I - NEGLIGENCE**

- 10 37. Plaintiffs repeat and incorporate by reference each and every statement  
11 and allegation contained in all preceding paragraphs as though fully set  
12 forth in this section.  
13 38. "Negligence requires a legal duty, breach of that duty, causation, and  
14 damages.... Whether legal duty is owed is a question of law." Gourneau v.  
15 Hamill, 2013 MT 300, ¶ 10, 372 Mont. 182, 311 P.3d 760. "Whether a party  
16 owes a legal duty depends largely on whether the allegedly negligent act  
17 was foreseeable," Id. at ¶ 12. Foreseeability is measured "on a scale of  
18 reasonableness dependent upon the foreseeability of the risk involved with  
19 the conduct alleged to be negligent." Poole v. Poole, 2000 MT 117, ¶ 20,  
20 299 Mont. 435, 1 P.3d 936 (quoting Lopez v. Great Falls Pre–Release  
21 Serv., Inc., 1999 MT 199, ¶ 27, 295 Mont. 416, 986 P.2d 1081). "In other  
22 words, duty 'is measured by the scope of the risk which negligent conduct  
23 foreseeably entails.'" Gourneau, at ¶ 12 (quoting Lopez v. Great Falls Pre–  
24 Release Serv., Inc., 1999 MT 199, ¶ 27, 295 Mont. 416, 986 P.2d 1081).  
25 Therefore, "[t]he question is whether the defendants reasonably could have  
26 foreseen that their conduct could have resulted in injuries to the plaintiff,  
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1 though ‘the specific injury need not be foreseeable.’” Id. (quoting Busta v.  
2 Columbus Hops. Corp., 276 Mont. 342, 363, 926 P.2d 122, 134 (1996)).

- 3 39. Defendant Holiday had a duty to Ms. Everett to provide her with a safe  
4 place to work where she would be free from harm from customers and  
5 other employees. It was foreseeable to Defendant Holiday that its failure to  
6 take appropriate precautions would result in harm to Ms. Everett and other  
7 employees. Defendant Holiday failed to respond appropriately to prior  
8 incidents demonstrating the Higgins Avenue Holiday store premises were  
9 not safe for employees. Defendant Holiday failed to provide safety training  
10 on how to deal with confrontational situations. Defendant Holiday failed to  
11 provide alarm buttons that worked and training about how to use the alarm  
12 buttons. Defendant Holiday routinely left one employee working alone  
13 during the 11am to 3pm graveyard shift, despite Ms. Everett’s continued  
14 requests for another employee due to safety risks. Further, prior incidents  
15 demonstrated a second employee was necessary.  
16 40. Other convenience stores operating in Montana, for the purpose of  
17 employee safety, have a minimum of two employees working the night shift  
18 simultaneously. Defendant Holiday could reasonably foresee that its  
19 conduct would result injury to its employees.  
20 41. Ms. Everett has struggled significantly since the attack. Directly following  
21 the attack she experienced confusion, could not tolerate loud noises, and  
22 could not maintain conversations with others. Due to her psychological  
23 injuries, Ms. Everett became more isolated and her personal relationships  
24 suffered. Ms. Everett experienced extreme fear following the assault and  
25 did not want to return to work at the store. She became depressed and  
26 anxious. Out of fear, she began carrying a knife with her. She experienced  
27 difficulty falling asleep and also began sleeping too much due to  
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1 depression. She experienced nightmares and lost interest in doing things  
2 she had previously enjoyed.

- 3 42. In approximately August and September 2020, Ms. Everett began to  
4 experience daily headaches, panic attacks, irritability, sleep disturbance,  
5 decreased attention, and poor decision making.
- 6 43. Ms. Everett's assault has made it difficult for her to work in a customer  
7 service environment and to maintain employment at subsequent jobs. Due  
8 to her negative associations from the assault she experiences difficulty  
9 working behind a counter and operating a cash register. She experiences  
10 difficulty working in customer service jobs where she could potentially be  
11 exposed to hostile customers.
- 12 44. August 2020, Ms. Everett became employed with Ko Chang in Missoula.  
13 September 2020, Ms. Everett left this employment due to not being able to  
14 continue work due because she was suffering trauma from the assault.  
15 The noise level in the kitchen environment exacerbated the confusion and  
16 emotional distress Ms. Everett already suffered as a consequence from the  
17 attack.
- 18 45. Upon her departure from Ko Chang, Ms. Everett began working for Best  
19 Western Hotel in Missoula as a housekeeper. When running cleaning  
20 equipment, Ms. Everett experienced loud noise aversion. She left this  
21 position in November 2020. Again, Ms. Everett experienced confusion and  
22 emotional anguish as a consequence of the attack she suffered while  
23 working for Defendant.
- 24 46. Defendant Holiday is liable to Plaintiff Savanna Everett for negligence.

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26 **COUNT II - NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**  
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- 1       47. Plaintiffs repeat and incorporate by reference each and every statement
- 2                  and allegation contained in all preceding paragraphs as though fully set
- 3                  forth in this section.
- 4        48. “A cause of action for negligent infliction of emotional distress will arise
- 5                  under circumstances where serious or severe emotional distress to the
- 6                  plaintiff was the reasonably foreseeable consequence of the defendant’s
- 7                  negligent act or omission.” Sacco v. High Country Independent Press, Inc.,
- 8                  271 Mont. 209, 232, 896 P.2d 411, 418 (1995). It is only for the court to
- 9                  decide whether severe or serious emotional distress can be found from the
- 10                 evidence, and for the jury to decide whether in fact it has existed. Id. 271
- 11                 Mont. at 233, 896 P.2d at 425. “[T]he jurors are best situated to determine
- 12                 whether and to what extent the defendant’s conduct caused emotional
- 13                 distress, by referring to their own experience. In addition, there will
- 14                 doubtless be circumstances in which the alleged emotional injury is
- 15                 susceptible of objective ascertainment by expert medical testimony.” Id.
- 16                 Furthermore, evidence of physical injury is no longer considered necessary
- 17                 to determine whether a party had suffered emotional distress. Id.
- 18        49. And lastly, the Court has adopted the Restatement (Second) of Tort’s
- 19                 definition of “severe or serious” emotional distress. “Emotional distress...
- 20                 includes all highly unpleasant mental reactions.... It is only where it is
- 21                 extreme that the liability arises.... The law intervenes only where the
- 22                 distress inflicted is so severe that no reasonable [person] could be
- 23                 expected to endure it. The intensity and the duration of the distress are
- 24                 factors to be considered in determining its severity.” Id., 271 Mont. at 234,
- 25                 896 P.2d at 426.
- 26        50. It was foreseeable to Defendant Holiday that the failure to provide a safe
- 27                 working environment would cause serious or severe emotional distress to
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1 an injured employee. The emotional distress Ms. Everett suffered as a  
2 result of the assault was so severe no reasonable person could be  
3 expected to endure it.

- 4 51. It was foreseeable to Defendant Holiday that having one employee working  
5 alone at night, without safety training, without knowledge of operating alarm  
6 buttons, on a premises that had a history of unsafe persons engaging in  
7 unsafe behavior, would result in an assault that would cause severe  
8 emotional distress.
- 9 52. September 18, 2020, Ms. Everett obtained a mental health evaluation from  
10 Ronald Barker, LCSW (Attachment A). Ms. Everett reported daily  
11 headaches, panic attacks five times per week, about two hours of sleep per  
12 night, waking up approximately four or five times a night, and being able to  
13 eat approximately one meal per day. Mr. Barker's assessment concluded  
14 Ms. Everett suffered from severe anxiety, severe depression, post-  
15 traumatic stress disorder, and that she was using substances to curtail  
16 exacerbated symptoms of trauma from the assault. Mr. Barker summarized  
17 the assault had exacerbated trauma Ms. Everett had experienced during  
18 her childhood and increased her overall trauma response.
- 19 53. November 11, 2020 Ms. Everett obtained a neuropsychological evaluation  
20 from Dr. Jackie Day (Attachment B).
- 21 54. Dr. Day determined Ms. Everett was clearly struggling psychologically. She  
22 endured significant and severe trauma from the assault. The trauma from  
23 the assault exacerbated the neglect, as well as abuse that had occurred in  
24 her younger years. Dr. Day concurred with Mr. Barker's assessment of Ms.  
25 Everett's pre-morbid PTSD symptoms being exacerbated by the assault.  
26 She concluded Ms. Everett should remain in therapy to continue to address  
27 her trauma symptoms.

55. Defendant Holiday is liable to Plaintiff Savanna Everett for negligent infliction of emotional distress.

## **COUNT III - INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

56. Plaintiffs repeat and incorporate by reference each and every statement and allegation contained in all preceding paragraphs as though fully set forth in this section.
  57. “[A]n independent cause of action for intentional infliction of emotional distress will arise under circumstances where serious or severe emotional distress to the plaintiff was the reasonably foreseeable consequence of the defendant’s intentional act or omission.” Sacco v. High Country Independent Press, Inc., (1995) 271 Mont. 209, 237, 896 P.2d 422. It is only for the court to decide whether severe or serious emotional distress could be found from the evidence, and for the jury to decide whether in fact it has existed. Id. at 233.
  58. Furthermore, evidence of physical injury is no longer considered necessary to determine whether a party had suffered emotional distress. Id. And lastly, the Court has adopted the Restatement (Second) of Tort’s definition of “severe or serious” emotional distress. “ Emotional distress... includes all highly unpleasant mental reactions.... It is only where it is extreme that the liability arises.... The law intervenes only where the distress inflicted is so severe that no reasonable [person] could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity.” Id. at 234.
  59. It was foreseeable to Defendant Holiday that the failure to provide a safe working environment would cause serious or severe emotional distress to an injured employee. The emotional distress Ms. Everett suffered as a

1 result of the assault was so severe no reasonable person could be  
2 expected to endure it.

- 3 60. Defendant Holiday acted intentionally when it failed to take precautions to  
4 protect the safety of its employees, such as failing to provide a second  
5 person during night shifts and failing to ensure the employees had access  
6 to working alarm buttons and training and information about how to use the  
7 alarms. Further, Defendant Holiday acted intentionally when after Ms.  
8 Everett's assault it failed to provide a second employee for the duration of  
9 her shift and failed to provide a second employee capable of providing her  
10 with assistance when dealing with agitated or hostile customers.
- 11 61. Ms. Everett's mental health evaluation and her neuropsychological  
12 evaluation demonstrate the emotional harm she suffered as a result of  
13 Defendant Holiday's acts and omissions in failing to provide a safe working  
14 environment.
- 15 62. Defendant Holiday is liable to Plaintiff Savanna Everett for intentional  
16 infliction of emotional distress.

18 **COUNT IV - PUNITIVE DAMAGES**

- 19 63. Reasonable punitive damages may be awarded when a defendant is found  
20 to have acted with malice. Mont. Code. Ann. § 27-1-221. Malice is present  
21 when there is knowledge of facts or intentionally disregarding facts create a  
22 high probability of injury to the plaintiff.... Mont. Code. Ann. § 27-1-221(1).
- 23 64. Defendant knew and understood the work environment at the Higgins  
24 storefront created a high probability of injury to Ms. Everett and other  
25 employees working there. The failure to engage in reasonable precautions  
26 also constituted negligent disregard of the high probability of injury to Ms.  
27 Everett.

65. Defendant's negligence was of such character as to entitle Ms. Everett to punitive damages under Montana law, in addition to compensatory damages for emotional and psychological injuries and economic loss.

# PRAYER FOR RELIEF

WHEREFORE, Plaintiff Savanna Everett moves this Court to grant judgment as follows:

1. Compensatory damages as determined by the Court to be just and necessary under the circumstances;
  2. Exemplary and punitive damages as allowed by law;
  3. Award all fees incurred litigating this matter, including but not limited to court costs, attorney's fees, and attorney's costs;
  4. For prejudgment interest;
  5. Any such other relief the Court deems just and proper.

RESPECTFULLY submitted this 9th day of September, 2021.

Kathleen A. Molsberry, Esq.  
Lowy Law, PLLC  
*Attorney for Plaintiffs*

## **DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all triable issues as a right by jury, pursuant to Mont. Rule of Civ. Pro. 15.

RESPECTFULLY submitted this 9th day of September, 2021.

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3 Kathleen A. Molsberry  
4 Lowy Law, PLLC  
5 Attorney for Plaintiffs  
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